

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|--|---------------------------|---|---|---------------------------------|
| Investigator: Peter Hoy (S7) | Team: Team # 5 | CCRB Case #: 201002478 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 02/23/2010 3:46 PM | Location of Incident: inside 7th Avenue and 9th Street subway station | Precinct: 78 | 18 Mo. SOL 8/23/2011 | EO SOL 8/23/2011 | |
| Date/Time CV Reported Tue, 02/23/2010 4:44 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 02/23/2010 4:44 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Thomas Marksberry | 28033 | 927605 | TB DT30 |
| 2. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. DTS Steven Bourekas | 06967 | 910742 | TB DT30 |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| A.POM Thomas Marksberry | Abuse: PO Thomas Marksberry stopped § 87(2)(b) and an individual named § 87(2)(b) | |
| B.POM Thomas Marksberry | Discourtesy: PO Thomas Marksberry spoke rudely to § 87(2)(b) and § 87(2)(b) | |
| C. An officer | Force: An officer used physical force against § 87(2)(b) | |
| § 87(4-b) § 87(2)(g) | | |

Case Summary

On February 23, 2010, § 87(2)(b) and her son, § 87(2)(b) filed a complaint with the Civilian Complaint Review Board by telephone. Earlier that day, at 3:46 p.m., § 87(2)(b) and a group of friends, including § 87(2)(b) and an individual known only as § 87(2)(b) were ejected from the 7th Avenue F line subway station in Brooklyn by two officers. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Thomas Marksberry stopped § 87(2)(b) and an individual named § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation B – Discourtesy: PO Thomas Marksberry spoke rudely to § 87(2)(b) and § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)
- **Allegation C: An officer used force against § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)
- § 87(4-b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- Born § 87(2)(b), § 87(2)(b) is a black male, who stands five feet and six inches, weighs 162 pounds and has black hair and brown eyes. § 87(2)(b)
§ 87(2)(b)

CCRB Testimony

On June 1, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 6A-E). § 87(2)(b)'s statement, which has been summarized below, was consistent with a telephone statement he provided on February 26, 2010 (encl. 5).

On a date that § 87(2)(b) could not remember, but the investigation determined to be February 23, 2010, § 87(2)(b) and a group of friends, including § 87(2)(b) and an individual he only knows as § 87(2)(b) were at the 7th Avenue F line subway station in Brooklyn. At what § 87(2)(b) estimated was 3:15 p.m., but the investigation determined to be 3:46 p.m., the group entered the station. One of his friends did not have his student MetroCard. Another friend swiped his own student MetroCard, allowing the friend to pass through the turnstile. The group then boarded the train. At the front of the train, there were two men that § 87(2)(b) believed to be police officers. One was identified by the investigation as PO Thomas Marksberry from Transit District 30. § 87(2)(b)

described PO Marksberry as a uniformed white male with a muscular build that stood five feet and six inches and had tattoos on both arms and a black “Mohawk” or “faux-hawk” hairstyle. § 87(2)(b) that when he asked PO Marksberry for his name and shield number, PO Marksberry directed him to the nametag on his shirt. § 87(2)(b) recalled that this read “Marsbury.” The other officer remains unidentified. § 87(2)(b) described him as a white male with a medium build that stood six feet and four inches and wore plain clothes.

PO Marksberry asked an MTA worker to stop the train and told § 87(2)(b) and his friends to exit the train. § 87(2)(b) and his friends complied. They followed PO Marksberry down a set of stairs to a platform near the 8th Avenue exit, where PO Marksberry yelled at the group about how they should not have entered the station. PO Marksberry told § 87(2)(b) he could leave, but asked § 87(2)(b) and § 87(2)(b) for their IDs, which they provided.

§ 87(2)(b) told PO Marksberry that his mother was a police officer, to which PO Marksberry responded, “I don’t care, I’ll knock her out.” § 87(2)(b) then said his brother’s father is a detective, to which PO Marksberry responded, “I don’t care, I’ll knock him out, too.”

At one point, the unidentified officer pushed § 87(2)(b) grabbed him by his shirt collar, raised him from the ground and shook him for about five seconds. § 87(2)(b) and his friends were then told they could leave. No other civilians or officers were around during the incident.

Attempts to Contact Civilians:

§ 87(2)(b) provided the names of five friends that were with him during the incident: § 87(2)(b) and an individual known only by the first name § 87(2)(b). § 87(2)(b) provided an address for § 87(2)(b) and a telephone number for § 87(2)(b) but said that his friends had told him they did not want to participate in the investigation.

Between February 26, and March 9, 2010, two letters were sent to § 87(2)(b) neither was returned by the USPS. On March 9, 2010, the undersigned reached § 87(2)(b) s mother, § 87(2)(b) at the phone number provided by § 87(2)(b). She advised the undersigned that § 87(2)(b) did not have a phone but could be reached by calling his stepfather, § 87(2)(b), and provided his phone number. Between then and July 16, 2010, the undersigned placed six additional telephone calls in an attempt to reach § 87(2)(b) through both his mother and stepfather. Despite two sending letters and placing seven phone calls, the undersigned has not been able to reach § 87(2)(b). Accordingly, he was deemed unavailable.

Between February 26, and March 9, 2010, two letters were sent to § 87(2)(b) but they were returned by the United States Postal Service as having an insufficient address. A search of the White Pages and LexisNexis directories yielded no additional addresses or phone numbers for § 87(2)(b). Accordingly, he was deemed unavailable.

§ 87(2)(b) did not have contact information for § 87(2)(b) or § 87(2)(b) and searches of the White Pages and LexisNexis directories did not yield addresses or phone numbers for either. Accordingly, they were deemed unavailable.

NYPD Statements:

Subject Officer: PO THOMAS MARKSBERRY

- *Born § 87(2)(b), is a white male, stands five feet and ten inches, weighs 205 pounds and has brown hair and brown eyes.*
- *On February 23, 2010, PO Marksberry worked alone from 9:00 a.m. to 5:35 p.m., uniformed, on foot, and assigned to school conditions in the 7th Avenue subway station in Brooklyn.*

Memo Book

PO Marksberry made the following memo book entries related to this incident (encl. 7A-D): at 3:46 p.m., two ejected, prepared two Stop, Question and Frisk reports: § 87(2)(b) black male, brown eyes, black hair, four feet and eight inches, 130 pounds, wearing blue jeans, born § 87(2)(b) Williamsburg Collegiate Charter School, mother Teresa § 87(2)(b) black male, § 87(2)(b) old, five feet and nine inches, born § 87(2)(b).

CCRB Testimony

On November 4, 2010, at 9:30 a.m., PO Marksberry was interviewed at the CCRB (encl. 8A-B). The following is a summary of his statement.

On February 23, 2010, PO Marksberry was working as a school coordinator inside the subway station at 7th Avenue and 9th Street in Brooklyn. This assignment involves dealing with middle school students from St. Xavier and high school students from John Jay High School, ensuring kids got on the subway safely and that no crime occurred. On the date of incident, like most days, PO Marksberry was working alone. He did not recall any other officers being in the station at the time, but speculated that other officers may have been in the station if they were traveling to court or traveling home.

Although he made notations in his memo book about this incident, PO Marksberry did not recall the details of the incident. PO Marksberry did not recognize a photo of § 87(2)(b). He did not recall if he wrote an ejection report. PO Marksberry denied threatening to use any force or “knock out” anyone. He did not recall using force or seeing other officers use force that day. He did not hear any other officers threaten to use force.

At the time of his interview, PO Marksberry had a hair style similar to a “faux hawk” and indicated that his hair may have been similarly styled at the time of the incident. PO Marksberry stated that he has tattoos on his left arm, but noted that he would have had sleeves rolled down and tattoos would not have been visible.

Subject Officer: DET. STEVEN BOUREKAS

- Born § 87(2)(b), Det. Bourekas is a white male, stands five feet and eight inches, weighs 240 pounds and has black hair and brown eyes.
- On February 23, 2010, Det. Bourekas worked alone from 1:30 p.m. to 11:35 p.m., in uniform and assigned to patrol subway stations on the F line between York Street and Church Avenue.

Memo Book

Det. Bourekas did not make any memo book entries related to this incident, but made the following entries near the time of incident (encl. 9A-D): at 3:46 p.m., at the 7th Avenue subway station; at 4:23 p.m., summons § 87(2)(b) issued to § 87(2)(b) for pulling open service entrance door number 539A1, walking through and staying in station; at 4:29 p.m., left the 7th Avenue subway station.

CCRB Testimony

On February 10, 2011, Det. Bourekas was interviewed at the CCRB (encl. 10A-B):. The following is a summary of his statement.

Det. Bourekas did not recall any incident involving a group of teenage males on February 23, 2010 inside the 7th Avenue subway station. He recalled being present at that station around the time of incident, where he issued a summons to an individual that was alone, but he did not

recall any other officers being present. Det. Bourekas said he is familiar with PO Marksberry, who he knows is usually assigned to the school outreach unit; however Det. Bourekas did not recall working with PO Marksberry on the date of incident, and had no specific knowledge about PO Marksberry's assignment that day.

Det. Bourekas denied threatening anyone with the use of force and or hearing any other officer make any threats of force. Det. Bourekas did not recall being asked for his name or shield number or refusing to provide them. Det. Bourekas did not push, shake or lift anyone by his shirt collar, nor did he see any other officer do this.

NYPD Documents

SPRINT

No SPRINT was found related to this incident. SPRINT number T08865 (encl. 11) indicates that on February 23, 2010, at 4:21 p.m., Det. Bourekas was inside the 7th Avenue subway station in regards to an unrelated incident.

Roll Call

The Transit District 30 roll calls for Tour 2 and Tour 3 on February 23, 2010 (encl. 12A-O), indicate the following Transit District 30 officers were the only ones assigned to posts that included the 7th Avenue subway station during their tours: Det. Bourekas, PO Eustace Burke, PO Vishwanath Tiwani and PO Louis Ramos. It also indicates that the following Transit District 30 officers were assigned to anti-crime at the time of the incident: Sgt. Kevin Meyer, PO Dana Davis, PO Raymond Sinnot, PO Rene Soto and PO Paul Loncke.

Stop, Question Frisk Report and Log

No Stop, Question and Frisk Report was filed regarding this incident (encl. 10, 19N).

Officer photographs

Officer photographs (encl. 13A-H) indicate the following: Sgt. Kevin Meyer is a § 87(2)(b) old white male, weighs 180 pounds and stands five feet and nine inches; PO Dana Davis is a § 87(2)(b) year old white male, weighs 158 pounds and stands five feet and four inches; PO Raymond Sinnot is a § 87(2)(b) old white male, weighs 235 pounds and stands five feet and ten inches; PO Rene Soto is a § 87(2)(b) old Hispanic male, weighs 190 pounds and stands five feet and ten inches; PO Paul Loncke is a § 87(2)(b) old black male, weighs 210 pounds and stands six feet and one inch; PO Eustace Burke is a § 87(2)(b) old black male, weighs 185 pounds and stands six feet; PO Vishwanath Tiwani is a dark skinned § 87(2)(b) old male, weighs 180 pounds and stands six feet; and PO Louis Ramos is a § 87(2)(b) old Hispanic male, weighs 170 pounds and stands five feet and six inches.

Status of Civil Proceedings

- Neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim with the City of New York with regard to this incident (encl. 15A-B).

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB History

- § 87(2)(b) has not filed any other CCRB complaints (encl. 3B).
- § 87(2)(b) has filed the following CCRB complaints (encl. 3A):

- § 87(2)(b)
-

Subject Officers CCRB History

- PO Marksberry has been a member of the service for ten years and there are no substantiated CCRB allegations against him (encl. 2).

Conclusion

Identification of Subject Officers:

PO Marksberry acknowledged his role in the incident. § 87(2)(b)'s description of the one of the subject officers was very detailed and matched the pedigree information of PO Marksberry, including his tattoos and hair style. Furthermore, § 87(2)(b) remembered this officer's name as "Marsbury," § 87(2)(g)

Although the SPRINT and Det. Bourekas's memo book place him at the 7th Avenue subway station close to the time of the incident, Det. Bourekas had no recollection of being involved. Furthermore, his pedigree information did not match the description of the subject officer that allegedly pushed § 87(2)(b) and he was wearing a uniform, which the second subject officer was not. § 87(2)(g)

Both PO Marksberry and Det. Bourekas were working alone. No other officers were listed on the SPRINT or Transit District 30 roll call as being at the 7th Avenue subway station at the time of the incident. Neither PO Marksberry nor Det. Bourekas recalled working with or seeing any other officers at the station and PO Marksberry explicitly stated that no other officers were involved in the incident.

§ 87(2)(b) only provided a limited description of the man who pushed § 87(2)(b) a white male in plain clothes that was slimmer and taller than PO Marksberry. According to the roll call, the following Transit District 30 officers are the only ones that were either assigned to patrol the 7th Avenue subway station at some point that day or had an anticrime assignment that may have involved wearing plain clothes: PO Burke, PO Tiwani, PO Ramos, Sgt. Meyer, PO Davis, PO Sinnot, PO Soto and PO Loncke. However, none of these officers matches the description provided by § 87(2)(b) and PO Marksberry stated that these officers were not present during the incident.

PO Marksberry raised the possibility that an officer passing through the station on his way to court or an off duty officer may have assisted him, but he had no specific recollection of this. Also possible is that an MTA employee or other civilian became involved in the incident.

§ 87(2)(g)

Investigative Findings and Recommendations:

Allegation A – Abuse of Authority: PO Thomas Marksberry stopped § 87(2)(b) and an individual named § 87(2)(b)

§ 87(2)(b) stated that one of his friends used a student Metrocard to allow other friends to enter the subway station. Immediately after, they were stopped by PO Marksberry. PO Marksberry did not recall stopping the group, but noted in his memo book that he stopped and ejected two males at the time and place of the incident.

According to Section 1050.4 of the Metropolitan Transit Authority’s Rules of Conduct (encl. 1D-K), “no person shall use or enter upon the facilities... without the payment of the fare or tender of other valid fare media used in accordance with any conditions and restrictions imposed by the Authority.” It further states that fare media that have been improperly transferred or used in a manner inconsistent with the rules shall be confiscated. According to the NYC Department of Education’s terms of use (encl. 1L-M), student MetroCards are “only for use by the student to whom it was issued,” and “students should not allow anyone else to use or borrow their card.” Section 1050.11 of the MTA’s Rules of Conduct states that “any person who is observed by a New York City police officer to be violating any of these rules... is subject to ejection from the facilities.”

§ 87(2)(g)

Allegation B – Discourtesy: PO Thomas Marksberry spoke rudely to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Marksberry told him he would “knock out” his brother’s father, and that PO Marksberry told § 87(2)(b) he would “knock out” § 87(2)(b)’s mother. As discussed above, neither § 87(2)(b) nor any other witnesses were available to corroborate these allegations. PO Marksberry denied making these remarks.

§ 87(2)(g)

Allegation C – Force: An officer used force against § 87(2)(b)

§ 87(2)(b) alleged that an officer pushed § 87(2)(b) lifted him off the ground and shook him; however, § 87(2)(b) was not available to corroborate this allegation, provide any details about the incident, or provide details about the subject officer. § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: 5

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date